



COUNTY OF LOS ANGELES

**Department of
Agricultural Commissioner/
Weights and Measures**

Cato R. Fiksdal
Agricultural Commissioner/
Director of Weights and Measures

12300 Lower Azusa Road
Arcadia, California 91006-5872
<http://acwm.co.la.ca.us>

Robert G. Atkins
Chief Deputy

June 29, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF PETROLEUM PRODUCTS AGREEMENT WITH
THE CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
FOR INSPECTING RETAIL GASOLINE STATIONS - ALL DISTRICTS
(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Chairman to sign accompanying agreement 04-0149 with the California Department of Food and Agriculture (CDFA) which reimburses to the County \$108,975 for one year, beginning July 1, 2004, for inspections conducted at retail gas stations by employees of the Department of the Agricultural Commissioner/Weights and Measures (ACWM).
2. Authorize the Director of ACWM to amend the contract in an amount not to exceed 10% of the original contract amount.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

For the past sixteen years CDFA has contracted with the Department to enforce California Business and Professions Code, Chapters 14, 14.5, and 15, pertaining to gasoline station advertising signage, and petroleum product labeling and quality standards. CDFA wishes to continue reimbursing the Department for its enforcement activities. CDFA will pay the Department \$75.00 for each initial inspection of locations selling petroleum and/or automotive products. Total reimbursement will not exceed \$108,975.

Implementation of Strategic Plan Goals

This agreement supports the County Strategic Plan Goals of Service Excellence (Goal 1), and Fiscal Responsibility (Goal 4). County residents benefit when the approximately 2000 retail gasoline stations maintain accurate, easily visible advertising displays at the street, and at the dispensers. They further benefit when various products including lubricants, antifreeze, and gasoline are properly identified as to their uses and capabilities. These inspections demonstrate fiscal responsibility as Department employees are already conducting accuracy testing of the gasoline meters at these locations.

FISCAL IMPACT/FINANCING

There is no impact to the Department's net County cost. This standard agreement will provide \$108, 975 for the provision of inspection services and is 100% revenue offset.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

It is within the scope of the mission of the Department to ensure that the residents of the county are protected from deceptive advertising practices that could take place at retail gasoline stations. The Department is also directed by law to protect consumers from being sold petroleum products that fail to meet established quality standards. Department inspectors found over 400 retail gasoline stations in violation of provisions of Chapters 14, 14.5, and 15 during FY 2002/03.

The terms of the Petroleum Products Agreement shall be for the period commencing July 1, 2004, through June 30, 2005.

The Agreement has been approved as to form by County Counsel.

IMPACT ON CURRENT SERVICES (OR PRODUCTS)

The Petroleum Products Agreement supports an enforcement program already in place.

The Honorable Board of Supervisors
June 29, 2004
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CONCLUSION

Approval of the recommended action would allow the Department to continue the long standing contractual and mutually beneficial relationship with CDFA.

Request that the four (4) copies of the Petroleum Products Agreement submitted to your Board be returned to this Department, along with the minute order authorizing the Chairman to sign. My department will forward the documents to the California Department of Food and Agriculture, Contracts Office.

Respectfully submitted,

Cato R. Fiksdal
Agricultural Commissioner/
Director of Weights and Measures

CRF:RGA:JNH;jh

Attachments

- c. Chief Administrative Officer
Executive Officer, Board of Supervisors
Auditor-Controller
County Counsel

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 06/03)

AGREEMENT NUMBER

04-0149

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

DEPARTMENT OF FOOD AND AGRICULTURE

CONTRACTOR'S NAME

COUNTY OF LOS ANGELES

2. The term of this Agreement is: July 1, 2004 Through June 30, 2005
3. The maximum amount of this Agreement is: \$108,975.00
One Hundred Eight Thousand Nine Hundred Seventy-five Dollars and No Cents
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work
Attachment 1 (2 Pages)

1 Page(s)

Exhibit B – Budget Detail and Payment Provision
Attachment 1, (1 page)

1 Page(s)

Exhibit C – General Terms and Conditions

3 Pages

Check mark one item below as Exhibit D:

☒ Exhibit D-Special Terms and Conditions
(Attached hereto as part of this Agreement)

Page(s)

☐ Exhibit D*-Special Terms and Conditions

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

COUNTY OF LOS ANGELES

BY (Authorized Signature)

DATE SIGNED)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

12300 Lower Azusa Road, Los Angeles, CA 91006

STATE OF CALIFORNIA

AGENCY NAME

DEPARTMENT OF FOOD AND AGRICULTURE

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

PAULA LEWIS, ACQUISITIONS MANAGER

ADDRESS

1220 N STREET, ROOM 100. SACRAMENTO. CA 95814

California Department of General
Services Use Only

☐ Exempt per:

EXHIBIT A
SCOPE OF WORK

1. Contractor agrees to provide the services described herein:

Inspections in accordance with California Business and Professions Code, Section 13434.

2. The contract managers for this Agreement are:

FOR CDFA:	FOR CONTRACTOR:
Name: David R. Lazier	Name: Cato Fiksdal
Section/Unit: Enforcement Program	Section/Unit: County Agricultural Commissioner
Address: 1220 N Street	Address: 12300 Lower Azusa Road
City/Zip: Sacramento, CA 95814	City/Zip: Arcadia, CA 91006
Phone: (916) 229-3044	Phone: (626) 575-5451

APPROVED AS TO FORM
[Redacted], County Counsel

By Elizabeth M. Cortez
Deputy

SCOPE OF WORK

Initial Inspections:

In the best interest of the State, in accordance with California Business and Professions Code Section 13434, and under the authority of the Secretary of the Department of Food and Agriculture (CDFA); the Division of Measurement Standards (Division) and the County of Los Angeles (County) agree to the following:

An initial inspection is the first inspection in the fiscal year of a location where the *primary* business is the sale of petroleum products (i.e., retail service stations, distributors of engine fuels, oils, quick-lube shops, etc.).

An initial inspection shall include the verification of compliance with the appropriate provisions of the Business and Professions Code and California Code of Regulations relating to the advertising and labeling of petroleum and automotive products, and to verify compliance with the provisions of Section 13660 at the location. Inspection reports shall be made for each establishment inspected on forms supplied by or approved by the Division. The original inspection reports shall be maintained at said county Office of Weights and Measures for three years and be made available to the Department of Food and Agriculture, Division of Measurement Standards, upon request.

The Department will pay said County \$75.00 for each initial inspection of establishments selling or distributing petroleum and/or automotive products; provided the inspection is done to determine compliance with California Business and Professions Code, Division 5, Chapters 14, 14.5 and 15. The total allocation to said County for these inspections shall not exceed \$108,975.00 for this agreement. This represents 1453 initial inspections per fiscal year.

Inspection Requirements

The Division reserves the rights to, at its discretion, assign and direct the county to take designated samples of bulk automotive or petroleum products for the purpose of marketplace surveys. The locations visited for the purpose of obtaining these designated samples shall be counted as inspections authorized by this agreement and will be paid at \$75.00 per location. The assigned number of inspections at brake shops, quick-lube shops, and other retail establishments selling bulk petroleum products or automotive products shall not exceed 10% of the total annual initial inspections authorized. Prior to being assigned sampling duties, the Division will provide training in the proper sampling and sample tag/chain of evidence completion procedures. Unless directed otherwise, all samples are to be submitted to the Division's Sacramento laboratory.

Sample containers and subvention sample identification tags will be provided by the Division. Payment for samples and transportation of the sample to the Division's Sacramento laboratory shall be the responsibility of said County. The color coded subvention sample identification tags must be

used on subvention samples to identify them for reimbursement verification. Said County will use the inspection and sampling procedures outlined in the Division of Measurement Standards' "Petroleum Products Inspection and Sampling Procedure Manual." Off sale of samples not meeting product specifications shall be the responsibility of the County or the Division, if requested to do so by the County, and will be handled in accordance with the guidelines established in the Division's "Citation Procedure Manual."

The Division reserves the right to do random re-inspections of locations that were billed for by the county. These re-inspections will be performed without prior notice by Division staff for the purpose of evaluating the work of the county. Enforcement action, if needed, will be taken by Division staff following the "Citation Procedure Manual" guidelines.

Said County agrees that appropriate enforcement action shall be taken upon discovery of violation(s) at the location being inspected. The enforcement actions will be handled in accordance with the guidelines established in the Division's "Citation Procedure Manual." When an enforcement action other than the issuance of a Notice of Violation (NOV) is specified and said county is unable or fails to take that action, the Division shall take the specified enforcement action. Payment for the inspection will be withheld if enforcement action is not taken against the violator.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. **Invoicing and Payment**

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears. Invoices shall be submitted to the designated CDFA Contract Manager for this Agreement.

2. **Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. **Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

Funds will be disbursed to said County on approval of an invoice submitted quarterly. The invoice shall be on an official county letterhead stating the total number of initial inspections conducted, the name and address of the location inspected, the number of designated samples taken, the name and location where the samples were taken, and the amount of money requested. The invoice for billing shall be submitted to the Division of Measurement Standards Office in Sacramento. **Completed legible copies of both the pink and goldenrod audit report forms are to be forwarded to the regional office within five (5) working days after completion of the inspection.**

NOTE: All invoices must carry the following language, including the signature line:

In accordance with the California Business and Professions Code Section 13434, funds have been allocated for CDFA to pay the County of _____ the sum of \$_____ per fiscal year.

The County has complied with the conditions as required.

Approved: _____ Date: _____
Division of Measurement Standards

EXHIBIT C
(Standard Agreement)

GENERAL TERMS AND CONDITIONS, GTC-304

1. **APPROVAL**: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT**: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT**: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES**: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR**: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. **RECYCLING CERTIFICATION**: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)
10. **NON-DISCRIMINATION CLAUSE**: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical

disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 304 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the

violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. UNION ACTIVITIES For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

b) No state funds received under this agreement will be used to assist, promote or deter union organizing.

c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

EXHIBIT D
(Standard Agreement)

SPECIAL TERMS AND CONDITIONS

1. **Excise Tax**

The State of California is exempt from federal excise taxes and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

2. **Settlement of Disputes**

In the event of a dispute, Contractor shall file a "Notice of Dispute" with the CDFA within ten (10) days of discovery of the problem. Such Notice of Dispute shall contain the Agreement number. Within ten (10) days of receipt of such Notice of Dispute, the Agency Secretary, or Designee, shall meet with the Contractor and the CDFA project manager for the purpose of resolving the dispute. The decision of the Agency Secretary or Designee shall be final. In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

3. **Evaluation of Contractor**

Performance of the Contractor under this Agreement shall be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation Sheet (STD 4) and maintained in the Agreement file. For consultant agreements, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, if it is negative and the agreement amount is over \$5,000.

4. **Agency Liability**

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

5. **Potential Subcontractors**

If Contractor subcontracts out a portion of the work required by this Agreement, nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

6. **Right To Terminate**

The State reserves the right to terminate this Agreement without cause subject to 30 days written notice to the Contractor. However, this Agreement can be immediately terminated by the State for cause.

Contractor may terminate this Agreement for cause and be relieved of any further obligations subject to a 60-day written notice to the State, only if contractor can no longer perform its responsibilities or if the State fails to perform its responsibilities as provided herein. Upon such termination, the State shall be relieved of any further payments and this Agreement shall be cancelled.